IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8063 OF 2006

1.Smt.Tarabai Sudam Sonavane & Ors. .. Petitioners.

V/s.

1.Sou. Parvatibai Gulab Gaikwad .. Respondent No.1.
2.Smt.Sarubai Bali Sonavane .. Respondent No.2.

Mr.Sooraj Hulke i/by Vishal Kolekar for the Petitioners.

Mr. Sudhir Hardikar for the Respondent No.1.

Mr.H.L.Palwe for the Respondent No.2.

CORAM : S. A. BOBDE, J.

DATED : 08th AUGUST, 2007.

P.C. :-

. Heard. Rule, returnable forthwith by consent.

2. This writ petition is directed against the order of the lower appellate court, granting an injunction to the respondent No.1. The lower appellate court has come to the conclusion that the respondent No.1 is in possession of the suit land and is, therefore, entitled to an injunction.

3. The learned counsel for the petitioners submits that there is an error committed by the lower appellate court in relying on a possession receipt, which shows

that the possession was handed over to the respondent No.1. According to the learned counsel, the agreement of sale in favour of the respondent No.1 shows that the agreement of sale was specifically entered with a statement that possession is not being handed over. It must, however, be noted that the possession receipt on which thumb impression of the respondent No.2 was obtained, was executed after the agreement was entered into i.e. in the evening on the same day. Though this is not done often there is nothing which prevents parties from doing so. The finding of the lower appellate court is based on an undisputed possession receipt that the possession is handed over to respondent No.1. Therefore, there is no reason to interfere with the grant of injunction. It is true that the respondent No.2 has filed a second written statement. However, the learned counsel for the respondent No.1 points out that the respondent No.2 has denied filing of an earlier written statement. However, this is a prima facie appreciation of evidence, which the lower appellate court has done on the basis of the possession receipt.

4. Hence, there is no reason to interfere with the impugned order. The writ petition is dismissed. Hearing of the suit is expedited. Rule discharged.

(S.A.BOBDE,J.)

.....